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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1077 OF 1985
WITH
CROSS OBJECTION (ST.) NO.3856 OF 1986

Bapu Nivrutti Devkate ...Appellant
V/s.
Parvatibai Bibhishan Jadhav & Ors. ...Respondents

Mr.A.M. Kulkarni, Advocate, for the Appellant.

Mr.S.D. Thokade, Advocate, for Respondent Nos.1 and 2.

Mr.S.M. Vidyarthi, Advocate, for Respondent No.4.

Mr.P.M. Mengane, Advocate, for Respondent Nos.5 to 7.

CORAM : ABHAY S. OKA, J.

DATE : 10TH APRIL, 2008.

ORAL JUDGMENT :

1. The submissions of the learned Counsel appearing for the parties were heard on 28th February, 2008. The Appeal was kept for dictation of Judgment on 27th March, 2008. On account of paucity of time, Judgment could not be dictated and, therefore now the Appeal is kept today for dictation of Judgment.

2. The appellant has taken an exception to the Judgment and Award dated 28th February, 1985 passed by the learned Member of the Motor Accident Claims Tribunal at Solapur. It will be necessary to briefly

refer to the facts of the case.

3. The 1st and 2nd respondents filed an application under Section 110-A of the Motor Vehicles Act, 1939 claiming compensation on account of death of one Bibhishan Sonba Jadhav. The 1st respondent is the widow of the deceased and the 2nd respondent is the daughter of the deceased who was a minor at the time of filing of the claim petition. The deceased was employed as a line-helper with the Maharashtra State Electricity Board and was earning Rs.450/- per month. The accident occurred on 11th April, 1979. On that fateful day, in the afternoon, he was proceeding on his bicycle by Shelgaon-Vairag Road. At that time a truck bearing No.MHF-8707 gave a dash to the deceased. The deceased was knocked down from his bicycle. The claim for compensation was made in the sum of Rs.1,07,060/-.

4. In the claim petition the appellant was impleaded as the purchaser of the said truck. A case was made out by the appellant (opponent No.1 in the claim petition) in his written statement that the driver of the truck was driving the truck by correct side at a moderate speed. It is alleged that the deceased was plying his bicycle on the wrong side of

the road and the accident occurred due to negligence of the deceased. The driver of the truck namely the 3rd respondent in the Appeal also filed his written statement. It is his case that he was driving the truck in a normal speed and the entire negligence was on the part of the deceased. According to him the deceased and his friend were proceeding towards Vairag by two different bicycles. There was a bullock-cart in front of them. The truck was behind the said deceased and his friend. It is stated that on sighting the bullock-cart he reduced the speed of the truck and sounded horn. At that stage the deceased and his friend overtook the bullock-cart. It is alleged that the deceased after overtaking the bullock-cart instead of taking the bicycle to left side, turned his bicycle towards right. As he was carrying load, he could not balance the bicycle properly. He stated that the deceased was frightened as he lost his balance and the load carried by him fell down on the road. It is alleged that the 3rd respondent took the truck towards his right side and stopped. Thereafter he noticed that the deceased was lying on the tar road with bleeding injury to his head. It is stated that the 3rd respondent took the deceased to the hospital.

5. The 4th respondent-insurance company was impleaded as the insurer of the truck. The insurance company filed a written statement contending that the insured transferred the truck to the appellant without any intimation to the said company. It is alleged that there was a breach of conditions of the policy of insurance as the driver was not the employee of the insured and did not possess a driving licence. It was stated that the limit of the liability under the insurance policy was Rs.50,000/-. It was contended that the policy was in the name of one S.M. Kumbhar who was already dead and therefore the said respondent No.4 was not liable.

6. A written statement was filed by the 5th respondent. In the written statement he stated that the truck was owned by his father Shivappa who under a will made a bequest of the said truck to the 5th respondent. The said Shivappa died on 21st February, 1978. Thereafter on 3rd October, 1978, the 5th respondent sold the truck to the appellant. It is stated that the 5th respondent thereafter applied to the Regional Transport Office, Pune for change of name. On 25th October, 1979, an entry of the the truck was made in the name of the 5th respondent. The 5th respondent submitted that on the day of the

accident, the appellant was the owner of the truck and therefore only the appellant was liable to pay compensation.

7. The learned Member of the Tribunal framed various issues. The first issue was regarding the negligence. The learned Judge held that the accident occurred due to rash and negligent driving on the part of the 3rd respondent. The learned Member of the Tribunal observed that on 3rd October, 1978, the appellant had obtained possession of the truck. It was observed that the appellant also took the custody of the registration book and insurance policy on 3rd October, 1978. He also renewed the insurance policy in the name of Mr.S.M. Kumbhar from 31st October, 1978 till 30th October, 1979 by paying the premium. The learned Member of the Tribunal observed that the next policy from 31st October, 1979 was for a year which was similarly got renewed by the appellant. The learned Member of the Tribunal held that since 3rd October, 1978, the appellant was running the truck as the owner thereof and that was possessing the registration and insurance documents of the truck. The learned Member of the Tribunal observed that not only that the appellant entered into possession but did considerable business of transport with the truck.

It was held that prior to the date of the accident he had satisfied and fully repaid the bank loan. The learned Member of the Tribunal referred to the decision of this Court in the case of Smt.Gulab Bai V/s. Peter [1975 SCJ 100]. Thereafter the learned Member of the Tribunal proceeded to observe that it was not the case of the 4th opponent i.e. the 5th respondent herein that he had informed the insurer i.e. the 4th respondent herein of the change in ownership. He observed that there was no question of assent on the part of the insurer to the transfer of the vehicle unlike in the Bombay decision. The learned Member of the Tribunal held that the insurer of the vehicle was not liable to pay the compensation. After computing the compensation payable, a sum of Rs.36,000/- with proportionate costs and interest at the rate of 6% p.a. was granted by the Tribunal to the respondent Nos.1 and 2. The compensation was made payable by the appellant and the 3rd respondent herein.

8. The Advocate for the appellant challenged the finding of the Tribunal on the issue of negligence. He submitted that the learned Member has committed an error by holding that the appellant was liable to pay compensation in his capacity as the owner. It was

submitted that mere possession of the vehicle does not confer any title on the transferee. He submitted that on the date of the accident, the appellant was neither a registered owner nor even an ostensible owner of the motor truck. Therefore, the appellant was not liable to pay the compensation on account of death caused in accident. He submitted that the Tribunal ought to have held that the person who was the registered owner of the vehicle at the time of accident should be taken as the owner of the vehicle. In respect of the transfer, it is submitted that on the date of the accident i.e. on 11th April, 1979, the motor vehicle stood registered in the name of the deceased husband of respondent No.7. The last submission made by the learned Counsel for the appellant is that in any event the insurer of the vehicle ought to have been held liable for payment of compensation. The learned Advocate for the appellant has taken me through the notes of evidence and various decisions of this Court and other High Courts. He also submitted that the compensation granted is on the higher side.

9. The learned Counsel appearing for respondent Nos.1 and 2 supported the finding on the issue of negligence by inviting attention of this Court to the evidence of the witnesses. He submitted that the

compensation awarded is on the lower side. He submitted that compensation of Rs.1,00,000/- ought to have been granted. He submitted that interest ought to have been awarded at the rate of 12% p.a. He submitted that the Cross-Objection deserves to be allowed.

10. Reliance is placed by the Counsel appearing for the insurer of the truck on certain decisions. He submitted that the insured had never informed the insurer of the transfer of the truck and therefore, the insurer was not liable. He submitted that the policy of insurance was in the name of the dead person (S.M. Kumbhar) and therefore, it was null and void. He submitted that no interference was called for.

11. Broadly, three questions arise in the Appeal; (i) whether the appellant was the owner of the truck on the date of the accident? (ii) whether the insurer (the 4th respondent) was liable to pay compensation? (iii) whether the finding of the Tribunal on the issue of negligence is correct? (iv) whether the quantum of compensation awarded is just and reasonable?

12. Before adverting to the submissions made by the learned Counsel appearing for the parties it will

be necessary to refer to the evidence adduced by the parties. Firstly a reference will have to be made to the evidence of the appellant. He stated that the accident took place on 11th April, 1979 in which the truck was involved. According to him the original opponent No.4 (respondent No.5) was the owner at the time of the accident. The case made out by the appellant is that he purchased the truck on 8th February, 1980 and that he insured the truck on the same day. He stated that the employer of the deceased had deposited a sum of Rs.10,000/- in the Civil Court for making payment to the 1st respondent (1st claimant). He was cross examined by the Advocates appearing for the parties. In the cross-examination he stated that the talks regarding purchase of the vehicle in question took place in October, 1978. He stated that he agreed to purchase the truck for Rs.57,000/-. He stated that he paid a sum of Rs.37,000/- to the 5th respondent on that day. He stated that the truck was hypothecated in favour of the Bank of India for the sum of Rs.20,000/-. He admitted that prior to the date of the accident, he had paid the entire amount payable to the bank. He stated that on 25th October, 1979, the registration of the vehicle was changed in the name of respondent No.5. He stated that on 8th February, 1980 he himself

applied to the R.T.O., Solapur and got the vehicle registered in the name of his son Dayashankar. He stated that from 3rd October, 1979 he was running the truck as owner thereof.

13. He was cross-examined by the Advocate for the 1st and 2nd respondents. He stated that on 3rd October, 1978 when he took possession of the truck, he also obtained the registration book and insurance policy. On 31st October, 1978, the insurance policy was renewed. The other evidence is of the driver of the truck. It will be necessary to refer to the evidence of the driver of the truck at a later stage.

14. It will be necessary to refer to certain documents produced on record. At Exhibit-98 there is a true copy of the policy produced by the 4th respondent-insurance company which was valid from 31st October, 1978 to 30th October, 1979. In the said policy the name of the insured is mentioned as S.M. Kumbhar (Shivappa M. Kumbhar). Thus the insured shown in the policy of the insurance is the said S.M. Kumbhar who was admittedly not alive on the day on which the policy was issued. Therefore a submission has been made by the learned Counsel appearing for the insurance company that the policy stood in the name of

a dead person and therefore the said policy was not valid.

15. It will be necessary to refer to the deposition of the appellant (the opponent No.1). Though in examination-in-chief he came out with the case that he purchased the truck involved in the accident on 8th February, 1980, in the cross-examination he has disclosed following facts:-

(a). The negotiations for purchase of the truck took place between the appellant and the original opponent No.4 i.e. respondent No.5 herein on 3rd October, 1978.

(b). He agreed to purchase the truck for the price of Rs.57,000/- and on 3rd October, 1978, the truck was placed in his possession against payment of sum of Rs.37,000/- made by him to the 5th respondent.

(c). The truck at the relevant time was hypothecated in favour of Bank of India and the amount payable to Bank of India was Rs.20,000/-. It was agreed that the appellant will pay instalment of Rs.2,000/- per month to

the said Bank.

(d). 4 days prior to the date of accident, the appellant paid the last instalment to the Bank and cleared all its dues.

(e). On 25th October, 1979, the truck which was earlier standing in the name of Shivappa, the father of the 5th respondent, was transferred in the name of the 5th respondent.

(f). On 8th February, 1980, an application was made to the R.T.O., Solapur and the truck was transferred in the name of son of the appellant.

16. In the cross-examination the appellant categorically admitted that since 3rd October, 1978, he was running the truck as the owner thereof. In response to questions asked by the Advocate for the original claimants, the appellant reiterated that on 3rd October, 1978 when he took possession of the truck, he also took custody of the registration book and the insurance policy. He stated that on 31st October, 1978 the policy was renewed. He stated that he paid the amount of premium to the 5th respondent

who in turn got the policy renewed in the name of his father. He stated that the policy was renewed from 31st October, 1979 in similar manner. The cover note as well as policy were handed over to the appellant by the 5th respondent. Thus he admitted that on 31st October, 1978 and 31st October, 1979 he paid the premium payable under the insurance policy. The deposition of the original opponent No.2-driver i.e. the 3rd respondent herein discloses that he was in the employment of the appellant on the date of the accident as a driver of the said truck.

17. The learned Counsel appearing for the appellant relied upon a decision of the learned Single Judge of this Court in the case of Jaysingrao Dadu Patil and Anr. V/s. Kutubuddin Ismail Soudagar & Ors. [1997 (1) Mh.L.J. 737]. He placed reliance on what has been held by the learned Single Judge in paragraph No.11 of the said decision. Paragraph No.11 of the said decision reads thus:-

> "11. The agreement entered into between the present appellants and respondent No.3 on 17-4-1980 leaves no manner of doubt that the sale of the tractor in question was conditional on payment of instalments of Rs.2,000/- per month by the present appellants to the State Bank of India. There is no dispute that said payment of

> Rs.2,000/- per month till discharge of entire loan together with interest was not made by the present appellants. When the sale of the tractor in question was conditional sale depending upon due discharge of obligation under the terms of the agreement, the property in the said tractor cannot be said to have passed on to the present appellants at the time when the agreement was made on 17-4-1980. Section 20 of the Sale of Goods Act provides that where there is unconditional contract for the sale of specific goods, the property in the goods passes to the buyer when the contract is made and it is immaterial whether at that time payment of the price of delivery of goods, or both, is postponed. However, section 20 of the Sale of Goods Act cannot be invoked nor can it be attracted when the agreement for sale is conditional. In other words section 20 has application only where the contract for the sale of goods is unconditional."

18. Before discussing the said decision of the learned Single Judge, at this stage, it will be necessary to refer to a decision of the Apex Court in the case of Vasantha Viswanathan & Ors. V/s. V.K. Elayalwar & Ors. [(2001) 8 SCC 133]. In the said decision the Apex Court dealt with the issue of transfer of ownership of motor vehicle. The Apex Court held that section 31 of the Motor Vehicles Act, 1939 does not effect a transfer but the same only prescribes a procedure for entering the factum of transfer in the registration certificate which is an

act posterior to the actual transfer. The Apex Court held that the transfer of the motor vehicle would be governed by provisions of section 19 of the Sale of Goods Act, 1930. In paragraph No.10 of the decision, the Apex Court held thus:-

> "10. Section 31 of the Motor Vehicles Act, 1939 lays down that where the ownership of any motor vehicle registered under the Motor Vehicles Act is transferred, the transferor and transferee both are required to report the fact of transfer to the registering authority so that particulars of transfer of ownership may be entered in the certificate of registration. **The transfer is not effected under Section 31 of the Motor Vehicles Act, 1939, but the same simply prescribes procedure for entering the factum of transfer in the registration certificate, which is an act posterior to the transfer. The transfer of vehicles in question would be governed by the provisions of Section 19 of the Sale of Goods Act according to which property in the vehicle would pass to Defendant 1 at such time as the parties to the contract intend it to be transferred. Thus the passing of property in the goods would be dependent upon the intention of the parties, as evidenced from the contract.** From the contract, Exhibits A-1 and A-2, it would appear that the parties intended that after the registration formalities were completed, price of the vehicles covered by the permits would be ascertained and thereafter the same would be paid by the Defendant 1, entitling him to take possession of the vehicles. Thus the parties intended that property in the vehicles shall pass only after possession of

> the vehicles was delivered to the Defendant 1 after completion of all the aforesaid formalities. In the present case, after registration formalities were completed, the value of the vehicles covered by the permits was not ascertained, much less paid, rather, on the other hand, possession was forcibly taken by the Defendant 1. Therefore, property in the vehicles did not pass to the Defendant 1 as required under Section 19 of the Sale of Goods Act. AS the Defendant 1 had illegally taken possession of the vehicles which he was not entitled to ply, it has been rightly held by the High Court that the plaintiff would be entitled to profits earned by the Defendant 1 and Defendants 4 to 7 from plying of the vehicles." (Emphasis added).

19. Thus what has been held by the Apex Court is in a transfer of vehicle is governed by the provisions of section 19 of the said Act of 1930 and accordingly, the property in the vehicle will pass to the transferee at such time as the parties to the contract intended it to be transferred. Thus, passing of the property in the vehicle would depend upon the intention of the parties as evidenced from the contract.

20. The learned Single Judge of this Court in the case of Jaysingrao Dadu Patil (supra) dealt with sections 19 and 20 of the said Act of 1930. Section 20 of the said Act of 1930 provides that where there

is an unconditional contract for sale of specific goods in a deliverable stage, the property in the goods passes to the buyer when the contract is made and it is immaterial whether at that time payment of the price or the time of delivery of the goods or both is postponed. In the case before the learned Single Judge there was an agreement entered into between the parties on 17th April, 1980 which left no manner of doubt that the sale of the tractor in question was conditional on payment of instalment of Rs.2,000/- per month by the appellants before the learned Single Judge to the State Bank of India. The said amount was payable to the Bank till discharge of the entire loan together with interest. The learned Single Judge, as is apparent from the paragraph No.11 of the said decision, was dealing with the case where the sale of the tractor in question was a conditional sale depending upon the due discharge of obligations under the terms of the agreement. Therefore, the learned Single Judge after considering the facts of the case before him came to the conclusion that the property in the tractor could not have passed on to the transferee on the date of execution of the agreement.

21. In the present case the appellant has not at all come out with the case of existence of a

conditional agreement. On the contrary in paragraph 3 of the cross-examination, he stated that from the date of the oral agreement i.e. from 3rd October, 1978, he was running the truck as owner thereof. If intention of the parties was that the sale will be conditional upon the appellant fulfilling the requirement of payment of instalments to the bank, the appellant would not have come out with the case that he was running the truck as owner thereof since 3rd October, 1978.

22. Therefore, this is not a case where the agreement arrived at between the parties on 3rd October, 1978 was a conditional agreement. In fact, from the aforesaid statements made by the appellant, it is obvious that the property in the truck was intended to be passed to the appellant when the contract was made on 3rd October, 1978 from which date the appellant admittedly started using the truck as the owner thereof. In any case, in the cross-examination, the appellant has stated that all the instalments payable to the Bank of India were paid by him four days prior to the date of the accident. Therefore, it is very difficult to accept the case of the appellant that on the date of the accident, the property in the truck had not passed in his favour.

In fact, on the date of the accident, the appellant was the owner of the truck. The procedural formality of transfer of the truck in the records of the R.T.O. was completed on 8th February, 1980. The first question is accordingly answered.

23. For dealing with the second question, it will be necessary to refer to the decision of the Apex Court in the case of Rikhi Ram & Anr. V/s. Sukhrani & Ors. [(2003) 3 SCC 97]. The question which arose for consideration of the Apex Court was where neither the insured nor the purchaser gave any intimation about the transfer of the vehicle to the insurance company, whether the insurance company was liable to pay compensation to a third party. The Apex Court considered the scheme of sections 94 and 95 of the said Act of 1939 and observed that as per the scheme of Act, an insurance company can cover three risks i.e. the risk of owner of the vehicle, the risk of the vehicle and the risk of the third party. The Apex Court observed that considering the provisions of sections 146 and 147 of the Motor Vehicles Act, 1988, the liability of the owner to have compulsory insurance is only in regard to the third party. In sofar as question of liability is concerned, in paragraph Nos.6 and 7 the Apex Court held thus:-

> "6. On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and the other third party is for whose benefit the vehicle was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance with the provisions of the Act. However, so far as third-party injured or victim is concerned, he can enforce liability undertaken by the insurer.
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> 7. **For the aforesaid reasons, we hold that whenever a vehicle which is covered by the insurance policy is transferred to a transferee, the liability of the insurer does not cease so far as the third party/victim is concerned, even if the owner or purchaser does not give any intimation as required under the provisions of the Act.**" (Emphasis added)

. The case before the Apex Court arose out of a claim petition under Section 110-A of the said Act of 1939. In the claim petition the Tribunal found that there was a transfer of the offending vehicle without intimation to the insurance company. The Tribunal held that in absence of an intimation, the owners were liable to pay compensation and the insurer was not liable. After laying down the law as aforesaid, the Appeal was allowed and the insurer was directed to pay the compensation to the victim with liberty to the

insurer to recover the said amount either from the insured or from the transferee of the vehicle.

24. As pointed out earlier, the original claimants i.e. the respondent Nos.1 and 2 herein have filed Cross Objection (St.) No.3856 of 1986. Apart from seeking enhancement in compensation, the challenge in the Cross Objection is that the Tribunal has committed an error by not holding the insurer liable. Considering the law on this aspect laid down by the Apex Court, this was a case where the Tribunal ought to have directed the insurer of the vehicle to pay the compensation amount to the claimants and to recover the same thereafter from the present appellant and the legal representatives of the insured. However before the said direction is issued, there is another aspect which will have to be gone into i.e. whether the policy was valid as it was issued in the name of a dead person. The submission of the learned Counsel appearing for the insurer was that essentially a policy of insurance is a contract between the parties and therefore if one of the parties to the contract is dead, by no stretch of imagination the contract can be held to be legal and valid. The said submission was countered by the Advocate for the appellant by relying upon a decision of Division Bench of the Madhya

Pradesh High Court in the case of Nani Bai & Ors. V/s. Ishaque Khan & Ors. [1995 ACJ 292]. The case before the Division Bench arose out of Awards made in claim petitions under section 110-A of the Motor Vehicles Act, 1939. The submission before the Division Bench was that the policy was issued in the name of dead-insured. It was also contended that it was a case of misrepresentation or concealment of facts by the legal representatives of the deceased-insured of the fact that the insured was already dead. While dealing with the said contentions, the Division Bench of the Madhya Pradesh High Court held that there was nothing in the policy to show that the policy was purely personal. In paragraph No.13, the Division Bench held thus:-

> "13. There is nothing in the policy issued in the name of Kartar Singh stating that it is purely personal to him. On the other hand, on plain reading of the condition of the policy it is clear that the coverage is that of the motor bus and not the insured. Section 94 of the Motor Vehicles Act insists for the compulsory insurance against the third party risk and prohibits user of vehicle in a public place unless there is a policy of insurance. The words "unless there is in force in relation to the use of the vehicle of that person ... a policy of insurance" go to show that it is the vehicle that is required to be insured and not the person or the owner of the vehicle and in such a

> situation the insurance company cannot escape its liability."

. The Division Bench quoted the passage in the Judgment of the three Bench delivered by Lord Denning M.R. in the case of Launchbury v. Morgans [(1971) 2 QB 245] which reads thus:-

> "A motor vehicle is a powerful engine of death and destruction. It is capable of doing much damage to persons and to property unless it is driven with due care and attention. As the number of cars increases and as their speeds get faster, so the danger grows. More and more people are killed. More and more are injured. More and more property is damaged. The sufferers ought not to be left without redress. So Parliament and Judges have done their best to see that they are compensated for their loss."

25. After considering the benevolent objects of the legislation, the Division Bench held thus:-

> "16. In our considered opinion, therefore, despite the fact that Kartar Singh was dead at the time of accident and the premium was paid by his legal heirs, the insurance company is liable to pay compensation to the heirs of the deceased and to the injured in the accident. If they are aggrieved by the concealment of fact or misrepresentation or fraud, if any, they can make a grievance before the appropriate forum separately, but they cannot escape their liability of

payment of compensation by raising this bogey of agreement being void."

26. I respectfully agree with the law laid down by the Division Bench of the Madhya Pradesh High Court. The submission of the learned Counsel appearing for the insurer could have been accepted if the policy of insurance was purely a matter of contract. Moreover, the liability of an insurer towards the third parties is a liability created by a Statute i.e. the Motor Vehicles Act, 1939 or Motor Vehicles Act, 1988. It is not only a contractual liability. The liability of the insurer to the third parties arises out of an obligation created by the Statute. Therefore, the said submission of the insurer cannot be acceded to as the deceased was a third party.

27. In sofar as issue regarding negligence is concerned, the Tribunal has referred to the oral and documentary evidence. The Tribunal has referred to the scene of accident panchanama at Exhibit-92 which shows that at the spot of the accident, there was a 11 ft. wide tar road with 8 ft. wide kaccha road on either side. The panchanama records that on the eastern side of the road, there were wheel marks on kaccha street to the extent of length of 30 ft. Apart from the panchanama, there is a report at Exhibit-99

of a mechanic regarding the condition of the truck on the date of the accident. The report discloses that there was no mechanical defect in the vehicle on the date of the accident.

28. It will be necessary to refer to the oral evidence. The witness No.2 examined by the claimants is one Arjun Tulshiram Bhosale. The witness stated that at the relevant time, he was also plying a bicycle. At that time the deceased was proceeding towards Vairag by his bicycle. He stated that both of them were proceeding from the left side of the road. He stated that a truck came from the rear side and gave a dash to the deceased. The truck went ahead and went into a ditch on the right hand side of the road and thereafter came to a halt. In the cross-examination of the said witness, he denied the correctness of the suggestion that there was a bullock-cart in front of him. He denied the suggestion that the driver of the truck sounded the horn while trying to overtake the bullock-cart. He denied the suggestion that he alongwith the deceased had already crossed the bullock-cart when the truck came close to them or that the deceased was in the middle of the road at the time of impact. He denied that the deceased was carrying a load on his bicycle.

He denied the suggestion that due to the heavy load, the deceased could not turn to the left side.

29. It will be necessary to refer to the evidence of the 3rd respondent-driver of the truck. In paragraph No.3 of his deposition he has stated thus:-

> "3. It was about 12 noon. I was driving the truck at a speed of about 30 to 35 k.m.p.h. Two bicyclists were going to Vairag. A bullock-card was also proceedings towards Vairag, about 3 k.m. away from the village. The bicyclists were behind the bullock-card. I sounded the horn of the truck. I slowed it. The bicyclists overtook the bullock-card in the Vairag. Before passing the bullock-cart I against sounded my horn. One of the bicyclists went to the left side of the road. The other bicyclist had something heavy on the carrier of his bicycle. He was on his right side of the road with his hands trembling. In order to save him I took the truck to my right side of the road into a ditch. I did not dash against the bicyclist at all. In his hesitation in taking a particular direction the bicyclist fell down. I go down the truck. I went near the fallen bicyclist. He has been injured in his head. I put him in my truck and also took his bicycle into my truck and took him to Vairag.

30. In the cross-examination he denied the suggestion that after overtaking the bullock-cart he suddenly took the truck to its left side. He denied the suggestion that as he was taking the truck to his

left side after overtaking the bullock-cart, he gave a dash to the bicycle. He stated that the police had charge sheeted him and thereafter he was acquitted. The learned Member of the Tribunal has considered and appreciated the evidence of both the said witnesses. The learned Member after referring to the condition of the truck and the bicycle found that the hind portion of the bicycle and its right side paddle was damaged. After noticing the damage as reflected from panchnama, the learned Member of the Tribunal observed that the nature of the damage caused to the bicycle does not support the theory that the bicycle fell down as the deceased was carrying heavy load on the bicycle. The learned Member of the Tribunal observed that the 3rd respondent had not taken the care which any ordinary prudent driver ought to have taken when he had seen the bullock-cart and the bicycle ahead of it. There is hardly any independent evidence on record to show that it was the deceased who suddenly turned his bicycle towards his right and that is the cause of the accident. After having considered the evidence of the aforesaid two witnesses, it is very difficult to disturb the finding of the Tribunal on the issue of negligence against the respondent No.3.

31. Now coming to the quantum of compensation, the

Tribunal has referred to the evidence of the 1st respondent. The Tribunal referred to the school leaving certificate of the deceased which disclosed that the date of birth of the deceased was 16th August, 1947. Thus the age of the deceased at the time of the accident was 31 years and 8 months. Certificate of the employer at Exhibit-104 showed that the deceased was getting total monthly emoluments at Rs.415.25 including all allowances. After making deduction towards C.P.F. subscription and professional tax, a sum of Rs.352.25 p.m. was payable. The learned Member of the Tribunal has taken dependency at the rate of Rs.200/- per month. However, while calculating the yearly dependency, he has taken the said amount at Rs.3,000/- which comes to Rs.250/- per month. By taking the yearly dependency at Rs.3,000/-, multiplier of 12 has been applied by the Tribunal. Accordingly, compensation has been fixed at Rs.36,000/-.

32. The certificate issued by the employer of the deceased at Exhibit-104 has been admitted in evidence without any objection. The said certificate shows that the last drawn pay of the deceased was Rs.415.25. Even if 1/3rd amount is deducted from the said amount, the monthly dependency will be slightly more than

Rs.280/-. Therefore, no fault can be found with the Tribunal if yearly dependency has been taken at Rs.3,000/-. Since the age of the deceased on the date of the accident was less than 32 years, in fact, multiplier of 13 ought to have been applied. Therefore, a sum of Rs.39,000/- (Rs.3,000/- x 13) will be payable. The Tribunal was under an erroneous impression that as no deduction was being made on account of lumpsum payment, it was not necessary to grant usual amount on account of loss of consortium, funeral expenses etc. The accident has taken place in the year 1979 and the claim petition is of 1981. In my view, a sum of Rs.11,000/- will have to be awarded on the said count. Thus the total compensation payable will be Rs.50,000/-. The Tribunal has awarded interest only at the rate of 6% p.a. Considering the fact that the claim was of the year 1981 and was decided in the year 1985, interest ought to have been awarded at the rate of 12% p.a. However, subsequently the rates of interest have considerably gone down and therefore I am fixing the rate of interest at 9% p.a.

33. It is not clear from the record as to whether any amount has been paid by the appellant and the 3rd respondent in compliance with the impugned Award. If any amount is deposited by the appellant in this

Court, the same will have to be transferred to the concerned Tribunal. Even the interest accrued on the said amount, if any, shall be transferred to the concerned Tribunal. The said amount as well as amount, if any, deposited by the appellant with the Tribunal will be permitted to be withdrawn by the 1st and 2nd respondents in equal shares. If any amount has been invested as per the impugned Award, it is not necessary to continue the investment as the 2nd respondent must have attained majority. Accordingly, the amount invested with the interest accrued thereon shall be disbursed to the original claimants thereon.

34. The balance amount of compensation payable to the 1st and 2nd respondents after taking into account the amount, if any, as aforesaid deposited by the appellant with interest accrued thereon shall be paid by the insurer of the truck within a period of four months from today. The appellant was the owner of the vehicle and the respondent No.5 claimed to be the legal representative of the deceased-insured on the basis of the will of the insured. Therefore, as held by the Apex Court in the case of Rikhi Ram (supra), after the said amount is paid by the insurer, it will be open for the insurer to recover the said amount jointly and severally from the appellant and the 5th

respondent by executing the same Award. The Appeal and Cross Objection are, therefore, disposed of by passing following order:-

"O R D E R"

(a). The compensation payable to the original claimants will be Rs.50,000/- with interest thereon at the rate of 9% p.a. from the date of filing of the claim petition till payment thereof. The claimants will be also entitled to recover proportionate costs of the claim petition.

(b). The amount, if any, deposited by the appellant in this Court together with interest, if any, accrued thereon shall be transferred to the concerned Tribunal. The said amount as well as the amount, if any, deposited by the appellant with the Tribunal with interest accrued thereon shall be disbursed to the claimants in equal shares.

(c). After making payment of the aforesaid amounts to the claimants, the balance amount payable as per the modified Award shall be

payable by the 4th respondent-the Oriental Fire and General Insurance Company Limited. The balance amount shall be paid by the said respondent within a period of four months from the date of receipt of the writ of this Judgment by the Tribunal.

(d). After depositing the amount, the 4th respondent shall be entitled to recover the said amount from the appellant and the respondent No.5. The liability of the said parties to pay the amount to the insurance company will be joint and several. It is made clear that amount can be recovered by the insurer by executing the modified Award and it will not be necessary for insurer to file separate proceedings.

(e). The Appeal and Cross Objection are partly allowed in above terms.

(f). There will be no orders as to costs in the Appeal as well as in the Cross Objection.

[ABHAY S. OKA, J.]